

32.600

financing, the subcontract must include a contract financing clause structured in accordance with 32.206.

[65 FR 16281, Mar. 27, 2000, as amended at 67 FR 70521, Nov. 22, 2002]

Subpart 32.6—Contract Debts

SOURCE: 73 FR 54002, Sept. 17, 2008, unless otherwise noted.

32.600 Scope of subpart.

This subpart prescribes policies and procedures for identifying, collecting, and deferring collection of contract debts (including interest, if applicable). Sections 32.607, 32.608, and 32.610 of this subpart do not apply to claims against common carriers for transportation overcharges and freight and cargo losses (31 U.S.C. 3726).

32.601 General.

(a) Contract debts are amounts that—

(1) Have been paid to a contractor to which the contractor is not currently entitled under the terms and conditions of the contract; or

(2) Are otherwise due from the contractor under the terms and conditions of the contract.

(b) Contract debts include, but are not limited to, the following:

(1) Billing and price reductions resulting from contract terms for price redetermination or for determination of prices under incentive type contracts.

(2) Price or cost reductions for defective certified cost or pricing data.

(3) Financing payments determined to be in excess of the contract limitations at 52.232-16(a)(7), Progress Payments, or 52.232-32(d)(2), Performance—Based Payments, or any contract clause for commercial item financing.

(4) Increases to financing payment liquidation rates.

(5) Overpayments disclosed by quarterly statements required under price redetermination or incentive contracts.

(6) Price adjustments resulting from Cost Accounting Standards (CAS) non-compliances or changes in cost accounting practice.

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(7) Reinspection costs for nonconforming supplies or services.

(8) Duplicate or erroneous payments.

(9) Damages or excess costs related to defaults in performance.

(10) Breach of contract obligations concerning progress payments, performance-based payments, advance payments, commercial item financing, or Government-furnished property.

(11) Government expense of correcting defects.

(12) Overpayments related to errors in quantity or billing or deficiencies in quality.

(13) Delinquency in contractor payments due under agreements or arrangements for deferral or postponement of collections.

(14) Reimbursement of amounts due under 33.102(b)(3) and 33.104(h)(8).

[73 FR 54002, Sept. 17, 2008, as amended at 75 FR 53149, Aug. 30, 2010]

32.602 Responsibilities.

(a) The contracting officer has primary responsibility for identifying and demanding payment of contract debts except those resulting from errors made by the payment office. The contracting officer shall not collect contract debts or otherwise agree to liquidate contract debts (*e.g.*, offset the amount of the debt against existing unpaid bills due the contractor, or allow contractors to retain contract debts to cover amounts that may become payable in future periods).

(b) The payment office has primary responsibility for—

(1) Collecting contract debts identified by contracting officers;

(2) Identifying and collecting duplicate and erroneous payments; and

(3) Authorizing the liquidation of contract debts in accordance with agency procedures.

32.603 Debt determination.

(a) If the contracting officer has any indication that a contractor owes money to the Government under a contract, the contracting officer shall determine promptly whether an actual debt is due and the amount. Any unnecessary delay may contribute to—

(1) Loss of timely availability of the funds to the program for which the funds were initially provided;

(2) Increased difficulty in collecting the debt; or

(3) Actual monetary loss to the Government.

(b) The amount of indebtedness determined by the contracting officer shall be an amount that—

(1) Is based on the merits of the case; and

(2) Is consistent with the contract terms.

32.604 Demand for payment.

(a) Except as provided in paragraph (c) of this section, the contracting officer shall take the following actions:

(1) Issue the demand for payment as soon as the contracting officer has determined that an actual debt is due the Government and the amount.

(2) Issue the demand for payment even if—

(i) The debt is or will be the subject of a bilateral modification;

(ii) The contractor is otherwise obligated to pay the money under the existing contract terms; or

(iii) The contractor has agreed to repay the debt.

(3) Issue the demand for payment as a part of the final decision, if a final decision is required by 32.605(a).

(b) The demand for payment shall include the following:

(1) A description of the debt, including the debt amount.

(2) A distribution of the principal amount of the debt by line(s) of accounting subject to the following:

(i) If the debt affects multiple lines of accounting, the contracting officer shall, to the maximum extent practicable, identify all affected lines of accounting. If it is not practicable to identify all affected lines of accounting, the contracting officer may select representative lines of accounting in accordance with paragraph (b)(2)(ii) of this section.

(ii) In selecting representative lines of accounting, the contracting officer shall—

(A) Consider the affected departments or agencies, years of appropriations, and the predominant types of appropriations; and

(B) Not distribute to any line of accounting an amount of the principal in

excess of the total obligation for the line of accounting; and

(iii) Include the lines of accounting even if the associated funds are expired or cancelled. While cancelled funds will be deposited in a miscellaneous receipt account of the Treasury if collected, the funds are tracked under the closed year appropriation(s) to comply with the Anti-Deficiency Act.

(iv) If the debt affects multiple contracts and the lines of accounting are not readily available, the contracting officer shall—

(A) Issue the demand for payment without the distribution of the principal amount to the affected lines of accounting;

(B) Include a statement in the demand for payment advising when the distribution will be provided; and

(C) Provide the distribution by the date identified in the demand for payment.

(3) The basis for and amount of any accrued interest or penalty.

(4)(i) For debts resulting from specific contract terms (*e.g.*, debts resulting from incentive clause provisions, Quarterly Limitation on Payments Statement, Cost Accounting Standards, price reduction for defective pricing), a notification stating that payment should be made promptly, and that interest is due in accordance with the terms of the contract. Interest shall be computed from the date specified in the applicable contract clause until repayment by the contractor. The interest rate shall be the rate specified in the applicable contract clause. In the case of a debt arising from a price reduction for defective pricing, or as specifically set forth in a Cost Accounting Standards (CAS) clause in the contract, interest is computed from the date of overpayment by the Government until repayment by the contractor at the underpayment rate established by the Secretary of the Treasury, for the periods affected, under 26 U.S.C. 6621(a)(2).

(ii) For all other contract debts, a notification stating that any amounts not paid within 30 days from the date of the demand for payment will bear interest. Interest shall be computed